

**MINUTES  
of the  
SIXTH MEETING  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**November 11-12, 2004  
Santa Fe**

The sixth meeting of the Water and Natural Resources Committee was called to order at 8:10 a.m. on Thursday, November 11, 2004, by Representative Joe M Stell, chair.

**PRESENT**

Rep. Joe M Stell, Chair  
Sen. Carlos R. Cisneros, Vice Chair  
Sen. Sue Wilson Beffort  
Rep. Joseph Cervantes  
Sen. Dede Feldman  
Sen. Mary Jane M. Garcia  
Rep. Dona G. Irwin  
Rep. Larry A. Larranaga  
Rep. James Roger Madalena  
Rep. Brian K. Moore  
Rep. Andy Nunez  
Sen. Mary Kay Papen  
Sen. H. Diane Snyder  
Rep. Mimi Stewart  
Rep. Don Tripp

**ABSENT**

Sen. Joseph J. Carraro  
Sen. Shannon Robinson  
Rep. Robert White

**Advisory Members**

Rep. Ray Begaye  
Rep. Anna M. Crook  
Sen. Gay G. Kernan (Nov. 11)  
Rep. Ben Lujan  
Rep. Danice Picraux  
Sen. Nancy Rodriguez  
Rep. Peter F. Wirth

Sen. Clinton D. Harden, Jr.  
Sen. Timothy Z. Jennings  
Rep. Rhonda S. King  
Sen. Steve Komadina  
Sen. Leonard Lee Rawson  
Rep. Henry Kiki Saavedra  
Sen. Leonard Tsosie  
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not present for the entire meeting.)

**Staff**

Jon Boller  
Gordon Meeks  
Jeret Fleetwood

## **Guests**

The guest list is in the original meeting file.

## **Thursday, November 11**

### **Water Infrastructure Financing**

James Jimenez, secretary of finance and administration, provided the committee with an estimate regarding the amount of money available for the legislature to appropriate to various projects during the 2005 legislative session. He explained that the governor has identified water as one of his top priorities, and discussed various ways the executive would like to see water projects addressed. Mr. Jimenez noted that the amount the state has available to pay for water projects falls well short of the total price tag for the projects that need to be undertaken if New Mexicans are to be adequately served. He estimated that funding gap at \$2 billion, and outlined strategies that have been developed to address water project financing in the short term. For example, Mr. Jimenez discussed the formation of the Water Infrastructure Technical Team, a cross-agency entity formed to review and evaluate proposed water projects. He also noted that a uniform application process is being developed, which would allow entities seeking water project funding to be able to apply with the New Mexico Finance Authority (NMFA), the Office of the State Engineer (OSE) and various other public and pseudo-public entities with one application. Mr. Jimenez went on to discuss strategies for making more efficient use of the water New Mexico currently has available, such as conservation, desalination, better metering and measuring of water resources and regional or clustered drinking water systems. Finally, he outlined a number of methods for funding water projects in New Mexico, such as: allocating money to the Water Trust Board; expanding the severance tax allocation for water projects up to \$20 million; taking advantage of nonrecurring general fund revenue; NMFA grant and loan funds; federal funds; and the governor's Water Innovation Fund. Mr. Jimenez reminded the committee that \$10 million had been appropriated by the legislature in 2004 for the governor's Water Innovation Fund, and that the governor would soon be announcing the 26 projects that have been selected.

Mr. Jimenez also presented a list of water projects to the committee, which represent both the water-related projects requested by state agencies and the priority projects cited by local governments and various political subdivisions in the state. He also noted that the local government projects listed are generally ready to begin once they receive funding. Finally, Mr. Jimenez pointed out that the total cost of the projects on the list is \$575,329,343.

Questions and comments included:

- local communities' benefits from the financing scheme;
- the fairness and appropriateness of water rates;
- the role of the Department of Finance and Administration in water project prioritization;
- the Water Infrastructure Technical Review Team;
- the adequacy OSE adjudication financing;
- water innovation projects for agricultural efficiency;

- the governor's identified priorities;
- communications by the governor to legislators for early understanding of governor's intentions;
- the intent to work with the legislature and relevant agencies to coordinate funding;
- Albuquerque's method of funding its portion of the San Juan/Chama project;
- the requirements for operational expenses and local matching money for projects;
- the competition for funding between water projects and other capital requirements;
- the regionalization of water systems and receptiveness of communities to this approach;
- the critical needs assessment and balance of needs for fairness;
- superfund issues within water system needs;
- federal money devoted to New Mexico water needs;
- roles of the interim Water and Natural Resources Committee in review of water capital projects; and
- the Gallup-Navajo pipeline and other mega-projects that are not on the list.

### **Settlements: Navajo, *Aamodt* and Taos**

John D'Antonio, state engineer, and DL Sanders, general counsel for the OSE, provided the committee with an overview of the status of three Native American water rights settlements occurring in New Mexico. They explained that the Navajo, *Aamodt* and Taos water rights settlements are not yet complete, but that implementation of each of them will cost the state a large sum of money. As a means of funding the implementation of the settlements, Mr. D'Antonio and Mr. Sanders provided the committee with a proposal to create an Indian Water Rights Settlement Fund. They explained that placing money in a fund now will allow funds to be available to implement the settlements when the time comes to do so, pointing out that sooner or later funds will be required for implementation of the settlements. Mr. D'Antonio and Mr. Sanders also noted that by choosing or declining to place money in the settlement fund, the legislature will be guaranteed some input into the settlements, since declining to fund the settlement implementation will effectively void the settlements. They also emphasized that the legislature could opt to place money in the settlement fund for the purpose of funding the implementation of particular settlements and not others, if it sees fit. Finally, Mr. D'Antonio and Mr. Sanders pointed out that each settlement will provide a better source of water to New Mexicans, and that not providing funds for the implementation of the settlements will prolong the already lengthy settlement negotiation process.

Questions and comments included:

- whether Taos-area constituents support the Taos water rights settlement

### **Healthy Forest Initiative**

Butch Blazer, state forester, provided the committee with an overview of the New Mexico Forest and Watershed Health Plan (NMFWHP). He explained that catastrophic wildfires during the past few years have led federal and state governments, including New Mexico, to begin paying closer attention to forest and watershed health. Mr. Blazer noted that many forests and watersheds have fallen into poor health due to over-dense fuels, invasive species, decreased

biodiversity and decreased wildlife habitat. He also stated that the governor has called for a forest health plan and provided the committee with an overview of the development of such a plan. Mr. Blazer noted that federal, state, tribal, private, academic and industrial stakeholders have been involved in the development of the forest health plan, and that through various meetings and public comments, a forest health plan had been developed and revised and is currently being finalized for approval. He cautioned the committee that implementing such a plan will cost a significant amount of money, but that one facet of the NMFWHP is to facilitate and streamline work being done on forests and watersheds to maximize the value of every dollar spent.

Mr. Blazer presented the committee with the latest draft of the NMFWHP, noting the plan's vision, guiding principles and recommendations for state and local action.

### **Interagency Phreatophyte/ Watershed Work Group**

Miley Gonzalez, secretary of agriculture, provided the committee with an update on the work done by the Interagency Phreatophyte/Watershed Work Group. He explained that the work group, which was enabled by House Bill 2 in 2004, is composed of representatives from various state agencies, tribal governments and soil and water conservation districts. Mr. Gonzalez went on to discuss how the money appropriated to the work group has been spent, noting that by the end of 2004, over 8,000 acres will have been treated for phreatophytes, particularly salt cedar. He provided the committee with a breakdown of both the number of acres treated in various areas of the state and the methods used in those areas. Mr. Gonzales also pointed out that methods for phreatophyte control include mechanical removal, aerial spraying and, in some cases, goats. Finally, Mr. Gonzalez noted that the NMFWHP is a parallel effort to the work group and emphasized the importance of both.

Questions and comments included:

- re-vegetation of treated areas;
- effectiveness of using goats for phreatophyte control; and
- work done on the middle Rio Grande.

On a motion made, seconded and unanimously approved, the minutes of the October 3-5, 2004 meeting were approved as submitted.

### **Conservation Funding Initiatives**

Bruce Thompson, director of the Department of Game and Fish, provided the committee with testimony regarding conservation measures in New Mexico. He pointed out that New Mexico currently does not have sustainable funding for land and wildlife conservation programs. Mr. Thompson pointed out that several other states, such as California, Nevada, Arizona and Colorado, have developed sustainable funding mechanisms for such programs through bond measures, cigarette taxes, lottery and gaming revenue and general fund money. He also noted that wildlife and recreation are vital to New Mexico's economy because of the large number of out-of-state visitors who come to New Mexico for activities such as hunting, fishing and camping. Mr. Thompson went on to point out that by not devoting funding to land and water conservation programs, New Mexico is not receiving large amounts of federal matching funds

that could help pay for such programs. Finally, he cited polling data that shows most citizens are largely in favor of conservation and are willing to pay for it somehow.

Questions and comments included:

- amounts required to begin and operate conservation programs;
- income generated from voluntary donations on income tax return forms;
- how the Department of Game and Fish used to be self-sustaining from revenue generated by the sale of hunting licenses;
- the reduction in the size of deer herds in New Mexico; and
- the size of deer herds in Texas.

David Henderson, New Mexico Audubon Society director, noted that many out-of-state visitors come to New Mexico for activities such as elk watching. He pointed out that in the past year, elk watching groups in the Valles Caldera area have accounted for more revenue than elk hunters.

Questions and comments included:

- that visitors from other areas of the country come to New Mexico to view what many New Mexicans view as commonplace; and
- the revenue generated by the Share with Wildlife license plates.

### **Rio Grande Legal Status Report**

Estevan Lopez, director of the Interstate Stream Commission (ISC), and Tanya Trujillo, general counsel for the ISC, provided the committee with an update regarding the legal disposition of endangered species along the Rio Grande, particularly the Southwestern willow flycatcher and the Rio Grande silvery minnow. They first provided the committee with a brief history of issues involving the Southwestern willow flycatcher, noting that the area designated as critical habitat for the flycatcher has been revised to include areas along the upper and middle Rio Grande. Mr. Lopez and Ms. Trujillo also noted that a significant problem is developing regarding flycatcher habitat near Elephant Butte Reservoir. They explained that a significant population of flycatchers has moved into an area at the upper end of the reservoir, which was once under water but is currently dry due to the decreasing size of the reservoir. Mr. Lopez and Ms. Trujillo went on to explain that having flycatchers nesting in areas that will likely be under water once the reservoir begins to rise again could present a serious problem.

Mr. Lopez and Ms. Trujillo also discussed the status of the lawsuit regarding the Rio Grande silvery minnow. They added that the minnow population continues to grow and outlined some of the efforts underway to improve minnow habitat and population numbers.

Mr. Lopez and Ms. Trujillo went on to discuss several other legal issues, including the designation of the Rio Chama as a "wild and scenic river", active water resource management and legal issues involving the lower Rio Grande and the Pecos River.

Questions and comments included:

- the number of farmland acres purchased by the state to retire water rights;
- the nature of the wild and scenic river designation;
- the cost of water rights acquisitions on the Pecos River;
- benefits of having a priority call on junior Pecos River users;

- reasons for expansion of Southwestern willow flycatcher habitat near Elephant Butte;
- active water resource management in the lower Rio Grande;
- limited use agreements and metering of Pecos River users; and
- objections to the Pecos River settlement.

### **Ground Water Conjunctive Management**

Peggy Johnson of the Bureau of Geology and Mineral Resources at the New Mexico Institute of Mining and Technology and Tom Morrison, chief hydrologist at the OSE, provided the committee with an overview of the basics of ground water modeling. They explained that ground water models help illustrate the relationship between surface flows, aquifers and wells. Ms. Johnson and Mr. Morrison also showed the committee how ground water models can be used to design and manage well fields, protect water resources and help with water-related litigation. They also provided the committee with a map showing the various OSE models and explained some of the details concerning those models.

Questions and comments included:

- recharge dynamics;
- how evaporation exceeds recharge;
- the distance between wells to avoid impairment;
- the age of aquifer waters; and
- the benefits of field trips and the Decision Makers Conferences.

Anne Watkins, special assistant to the state engineer, provided the committee with a discussion regarding the regional clustering of water systems. She explained that there are close to 1,400 drinking water systems scattered across New Mexico, most of them small ones, and many that overlap one another. Ms. Watkins went on to note that there simply are not enough water rights, water resources or funding available for all of those systems to be able to continue to function. She noted that the best solution to this growing problem is the consolidation and cooperation of water systems. Ms. Watkins indicated that while consolidating, or clustering, water systems will be initially costly, such a strategy would also make better use of available water resources by being more efficient. As an example, Ms. Watkins stated that many of the emergency requests the OSE received for water were due to failing water systems, not drought conditions. She also noted other areas that have consolidated their water systems and saved both water and operating costs.

Questions and comments included:

- the best method of interconnecting water systems;
- the appropriate state share of funding the clustering of water systems; and
- the NMFA Oversight Committee's response to the concept of consolidation of water systems.

The committee recessed at 5:20 p.m.

**Friday, November 12**

**Proposals for Legislation**

The committee discussed and endorsed the following measures for introduction in the next regular legislative session:

1. NMSU Water Resources Research Institute creation and funding;
2. agricultural water conservation expenses, income and corporate income tax credits;
3. produced water tax credits;
4. acequia protection measures;
5. a memorial on creation of water authorities;
6. Indian Water Rights Settlement Fund;
7. strategic water reserve;
8. creation of a Water Rights Ombudsman Office; and
9. Water Trust Fund appropriation.

**Pre-1907 Water Rights**

Corky Herkenhoff of the Middle Rio Grande Water Rights Association provided the committee with an overview of the dispute regarding pre-1907 water rights. He explained that the state engineer does not recognize the water rights of some individuals with pre-1907 water rights, mostly because the OSE refers to a 1917 ditch survey to determine water rights. However, Mr. Herkenhoff contended that some water rights that did exist before 1907 were not reflected in the 1917 survey. He went on to explain to the committee that the simplest remedy to the dispute would be to amend Section 72-2-16 NMSA 1978, noting that a bill doing so passed the legislature during the 2004 session but was vetoed by the governor.

Questions and comments included:

- the reason for the governor's veto;
- an example of how the state engineer's criteria works;
- how pre-1907 rights are the only rights available for transfers to other uses;
- the estimated percentage of water rights that are pre-1907 rights;
- de novo appeal of the OSE; and
- percentage of OSE decisions that go to appeal in district court.

**Sustainable Energy Initiative**

Ned Farquhar, special assistant to the governor on energy and environment, provided the committee with testimony regarding a clean energy program in New Mexico. He explained that other states are currently moving forward with clean energy requirements, most notably California and Colorado. Mr. Farquhar pointed out that initiatives in California and Colorado provide New Mexico with a valuable opportunity to develop clean energy programs that can be used to sell power to those states. He also emphasized that rising oil and natural gas prices make developing clean, sustainable energy programs an even more urgent priority.

Mr. Farquhar went on to explain that while the governor has formed a task force to study clean energy initiatives, that task force will not be recommending any legislation for a few more

weeks. However, Mr. Farquhar did provide the committee with a list of legislation the task force is likely to suggest, including tax credits, a Clean Energy Fund, biomass development and public transportation for state employees.

Questions and comments included:

- tax incentives for "green" buildings;
- the difference between power transmission and distribution;
- biomass initiatives; and
- previous use of solar panels as clean energy.

### **Endangered Species Collaborative**

Eileen Grevey Hillson, a member of the Water Trust Board, provided the committee with an overview of the Middle Rio Grande Endangered Species Act Collaborative Program. She explained that the collaborative program is made up of 21 governmental, environmental, business and university entities, all of whom share an interest in developing long-term solutions to Endangered Species Act issues along the middle Rio Grande. Ms. Grevey Hillson provided the committee with a brief history of the collaborative program, explaining that the 21 entities involved are signatories on a Memorandum of Understanding, and that the program basically grew as a response to the lawsuit involving the Rio Grande silvery minnow. She went on to provide an overview of the collaborative program's funding sources, which are mostly write-in funding from Congress, although New Mexico has also contributed over \$6 million. Ms. Grevey Hillson then outlined some of the projects the collaborative program has been involved in, particularly habitat restoration projects along the Rio Grande. Finally, she emphasized that the collaborative program's main goals are to provide decision making at a local level, rather than entities in Washington, D.C., making decisions regarding the Rio Grande, and to avoid costly and contentious lawsuits involving endangered species along the Rio Grande.

Ralph Peterson-Schmidt informed the committee that real improvements have been made along the Rio Grande and that more silvery minnows are currently being harvested than ever before. He also discussed minnow population management strategies, habitat restoration programs and possible water management strategies, such as improved measurement and metering of water flows.

Questions and comments included:

- habitat restoration work above Cochiti Lake;
- progress of 10-year plan for minnow recovery;
- numbers required to de-list the silvery minnow and Southwestern willow flycatcher; and
- participation of Native American entities in the collaborative program.

### **Water Trust Board**

Ms. Grevey Hillson provided the committee with a summary of the projects the board is considering. She explained that the board has received 99 letters of interest with requests for funding totaling \$850 million and that 27 of those applications have been selected. Ms. Grevey Hillson indicated that the projects selected total about \$22 million, which she noted is roughly



the bonding capacity available to the Water Trust Board. She also discussed a criteria committee appointed by State Engineer D'Antonio; potential funding mechanisms for water projects, particularly water system improvements; and the potential for federal funding to stop at any time.

Trudy Valerio Healy, another Water Trust Board member, provided the committee with an overview of the makeup of the trust board. She noted that most water stakeholders are represented on the board. Ms. Valerio Healy also discussed the trust board's need for a project manager to perform such duties as processing applications and doing field work that the board itself is unable to do.

Paula Garcia, another Water Trust Board member, echoed the comments made by Ms. Grevey Hillson and Ms. Valerio Healy. She also noted that currently, the board's administrative costs are paid by the NMFA. Ms. Garcia pointed out that while the board has no clear way to administer project oversight, there remains some debate about how best to accomplish that.

Questions and comments included:

- whether applications for funds have been received from Albuquerque-area entities;
- local participation in funding for each project;
- the scoring system for selection of projects to receive funding;
- the effect of new arsenic standards on water systems.

### **NMSU Water Research and Education Projects**

Craig Runyon of the New Mexico State University College of Agriculture and Home Economics provided the committee with an overview of the various NMSU programs involving water resources, particularly the programs undertaken by the Center for Applied Remote Sensing in Agriculture, Meteorology and Environment (CARSAME). He explained that the CARSAME Program involves the application of space technology for solutions to water problems. For example, Mr. Runyon outlined the Semi-distributed Land-use Run-off Process (SLURP), which uses satellite imagery to identify and define hydrologic conditions in the Rio Grande Basin.

Bernhard Leinauer of NMSU's Turf Research Program provided the committee with an overview of the Arid Urban Turfgrass Program at NMSU. He explained that the program is primarily used to improve the grass grown on golf courses, but he also pointed out that the 2004 Super Bowl was played on turf developed at NMSU. Mr. Leinauer went on to discuss the value of golf to New Mexico's economy, noting that estimates place the amount generated by greens fees, cart rentals and various other golf-related expenses at \$120 million per year. He also noted that while golf courses do not require potable water, the types of turf grown on golf courses that are watered with treated effluent will be somewhat different from turf used on courses watered with potable water. Mr. Leinauer went on to explain that different types of turf require different methods of course management, and that while NMSU does offer some golf course management classes, they are not specific to effluent-watered courses. He noted that effluent-watered courses looking for superintendents may be forced to look out of state for candidates, rather than at graduates of the NMSU program.

Questions and comments included:

- the value of encouraging golf courses to consume less water;
- conversion from potable water delivery system to effluent lines;
- whether turf developed at NMSU could be used for city parks; and
- the value of golf-specific presentations.

Dean Jerry Schickedanz of the NMSU College of Agriculture and Home Economics thanked the committee for hearing from his department.

Questions and comments included:

- funding for NMSU viticulturist; and
- funding request for the NMSU Turf Program.

Linda Taylor, also of NMSU, provided the committee with a discussion of the various projects involving waste wood that are currently underway around the state. She explained that much of the work being done on watershed thinning and phreatophyte control produces a tremendous amount of waste wood, and that such wood provides a number of economic development opportunities to rural communities in New Mexico. For example, Ms. Taylor showed the committee examples of the charcoal produced by partially burning the waste wood. She also noted that the waste wood is valuable for mushroom cultivation, but that a state microbiologist position would be beneficial to further such cultivation efforts.

Representative Stell thanked the committee members, staff, presenters and the audience for their involvement with the committee over the course of the interim.

There being no further business, the committee adjourned at 4:25 p.m.